

Chapter XII
Other Reference Materials

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**DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT
DIVISION OF COMMUNITY AFFAIRS
HOME Investment Partnerships Program**

1800 Third Street, Suite 390-3
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October 12, 2001

TO: HOME State Recipients

FROM: Wayne Walker
HOME Section Chief

RE: **HOME Affordability Requirements, the Repayment and Recapture of HOME Funds, and Program Income**

The purpose of this Management Memo is to provide guidance to State Recipients in their enforcement of the affordability requirements of the HOME Program and to ensure that affordable housing will continue to be provided in both rental and homeownership inventories. The Department, as the Participating Jurisdiction (PJ), and its State Recipients, through our State Standard Agreements, must ensure that HOME investments yield affordable housing over the long term. HOME imposes rent and occupancy requirements over the entire affordability period regardless of the term of the loan, regardless of whether the loan is prepaid, and regardless of any change of ownership in rental projects.

Rental Housing

Rental units assisted with HOME funds are required to remain affordable for a designated length of time. The HOME-assisted units must remain affordable regardless of the term of the loan or any change in ownership. The affordability period is dictated by the amount of HOME funds committed to each HOME-assisted unit and the type of housing activity funded. Federal Final Rule Section 92.252 addresses the minimum period of affordability for rental units.

For HOME-assisted rental units, the PJ must enforce income, occupancy, and rent requirements, property standards, and affirmative marketing for the period of affordability. Neither the Department, as the PJ, nor any State Recipient, Community Housing Development Origination (CHDO) or Subrecipient is permitted to opt-out of the affordability requirements without triggering the "repayment" requirements. Further, the Department requires all State Recipients to fully enforce the affordability of any HOME-assisted rental units, even if it requires the use of legal remedies by the State Recipient.

When HOME funds are invested in a rental project that is terminated before completion, or invested in housing which failed to comply with the affordability requirements for the entire affordability period, the Participating Jurisdiction must repay these funds to the Treasury (92.503(b)). Due to the fact that the Department must repay these funds, any State Recipient which fails to maintain the affordability requirements for rental housing projects will be required to repay the Department in full (including any required interest). Failure to immediately repay HOME funds to the Department will result in penalties, including prohibition from submitting future applications for funding until the amount is repaid in full, and performance penalties the next time the State Recipient applies for funding.

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Homeownership

HOME funds used to assist homebuyers also have affordability requirements. The minimum affordability periods are listed in 24 CFR 92.254. In accordance with 92.254(a)(5), HUD allows PJs two options for ensuring the affordability of housing acquired by HOME-assisted homebuyers if the housing does not continue to be the principal residence of the family during the duration of the period of affordability. These options are: the Recapture option or the Resale option. The option selected by the PJ must be used by State Recipients and subrecipients, also.

The Recapture option is a mechanism to recapture all or a portion of the direct HOME subsidy if the HOME recipient decides to sell the house before the end of the affordability period, at whatever price the market will bear. The Recapture option provides the PJ, the State Recipient, and the assisted homebuyer with maximum flexibility. The homebuyer is permitted to resell the property at whatever price the market will bear, lenders are more comfortable with the recapture provision, and recapture is easier to administer.

Therefore, the Department has selected the Recapture option of ensuring the affordability of housing acquired by HOME-assisted homebuyers. The Department has also elected to allow State Recipients to reduce the amount of the HOME investment that is recaptured on a pro rata basis to reflect the number of years the homeowner has owned and occupied the housing measured against the required affordability period (92.254(a)(5)(ii)(A)(2)). For example: A homeowner who received a \$20,000 HOME loan, requiring a 10 year affordability period, sells the house after living in it for 5 years. The full principal amount of \$20,000 is repaid, but the State Recipient may treat 50% of the returned principal as Recaptured Funds and 50% as Program Income.

Program Income vs. Recaptured Funds

HUD makes an important distinction in the way PJs and State Recipients can use Program Income and Recaptured Funds. When a PJ or a State Recipient receives Program Income, they are permitted to keep 10% of the funds for administration. However, when Recaptured Funds are received, no administrative funds can be kept. 100% of Recaptured Funds must be invested in another HOME-eligible activity.

Recaptured funds and Program Income do not have to be expended on the same type of activity as that from which the funds were generated, but they are required to be expended before any new HOME funds can be drawn down from the Treasury (24 CFR 504(c)(viii)). The Department has begun enforcing this requirement by holding back disbursement requests received from State Recipients that have a balance in their local HOME account.

Quarterly and Annual Reports are required of all State Recipients, even those that do not have an active HOME contract. The Quarterly and Annual Reports must clearly show the amount of Program Income and Recaptured Funds received, expended and on-hand. If a balance has been eliminated since the last report, include with the disbursement request a letter indicating that the funds have been expended.

Please refer to the attached CPD Notice 97-09 entitled "HOME Program Income, Recaptured Funds, Repayments and CHDO Proceeds" for additional information. If you have any questions regarding this matter, please contact your HOME Program Representative.

Attachment: CPD Notice 97-09

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**HOME**

HOME Investment Partnerships Program

MANAGEMENT MEMORANDUM

Memorandum Number: 00-2

TO: All HOME Contractors**DATE: June 30, 2000****FROM: Wayne Walker, HOME Section Chief****SUBJECT: Clarification of Lead-Based Paint Regulations**

This memo corrects the April 11, 2000 memo, "Questions from Contract Management Training" as it relates to the effective date of the Lead-Based Paint Regulations. We have received the following clarification from HUD on the effective date of the Lead-Based Paint Regulations:

All HOME funds not yet set-up before the September 15, 2000 effective date of the new Lead-Based Paint Regulations must comply with the new regulations (24 CFR Part 35). This includes all 97-HOME, 98-HOME, and 99-HOME contracts that have not yet set-up all of their funds.

This clarification only applies to the HOME Program; other programs such as CDBG may have different requirements.

To assist contractors in meeting the new Lead-Based Paint Regulations, we will be providing training throughout the State in late summer, and we will notify contractors as soon as possible. Basically, the new Lead-Based Paint Regulations require lead hazard evaluations, lead hazard reduction, and clearances of housing built prior to January 1, 1978 and assisted with HUD funds. Please refer to the enclosed charts for comparison of the current lead-based paint regulations and the new regulations.

If you would like more information, you may send a fax to the attention of Pamela Graybill (916-322-2904) requesting the Lead Based Paint chapter from the year 2000 Contract Management Manual. You may also access the text portion only of this chapter on the HCD web page (the web version doesn't have any attachments) at www.hcd.ca.gov; choose the following options: Services, then Loans and Grants, then Division of Community Affairs, and then HOME Investment Partnerships Program, and then Grant Management Manual. You need to have Adobe Acrobat on your computer to download this file so if you don't have Adobe Acrobat, download it first from www.adobe.com (on this homepage, choose "Get Acrobat Reader" at the bottom of the homepage.)

You may also access the HUD Office of Lead Hazard Control (which has the regulations) at www.hud.gov/lca

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HOME Investment Partnerships Program

MANAGEMENT MEMORANDUM

Memorandum Number: 00-1

To: All HOME Contractors**DATE: February 14, 2000****FROM: Wayne Walker, HOME Section Chief****SUBJECT: Loan Processing Fees Are Prohibited**

It has come to our attention that some State Recipients or their administrative subcontractors are charging HOME first time home buyer clients or sellers a loan processing fee in order for the client to obtain a HOME loan. Our contractors are hereby reminded that this is a prohibited activity under federal regulations under 24 CFR Part 92, Section 92.214(b). Any State Recipient or its administrative subcontractor charging such fees is to cease and desist immediately.

Background

The regulation cited above says: "Participating jurisdictions may not charge monitoring, servicing and origination fees in HOME-assisted projects. However, participating jurisdictions may charge nominal application fees (although these fees are not an eligible HOME cost) to project owners to discourage frivolous applications. Such fees are applicable credits under OMB Circular A-87."

As some HOME contractors may recall, at the inception of the HOME program, initial federal regulations prohibited the use of HOME funds for any administrative costs. Many States proposed the imposition of application fees, monitoring fees, servicing fees and origination fees on HOME project owners to cover their administrative costs. HUD, however, felt the imposition of such fees was inconsistent with statutory intent. HUD reasoned that such attempts by States to recoup their costs would inevitably lead developers and others to inflate project costs. Further, it would create the appearance that the HOME client was "paying" for the HOME funds that he/she had received. Thus, federal regulations were amended in 1992 to allow up to ten percent (10%) of a State's allocation to be used for administrative costs and to prohibit loan processing or loan origination fees from being charged to HOME-assisted projects.

As you know, the State allows its State Recipients and CHDOs to use an amount of up to 5% of their activity dollars for program administration. However, if administrative costs at the local or CHDO level exceed this allowance, programs are prohibited from recouping those costs from buyers or sellers in any way, including the imposition of loan processing fees.

Action Required

- Any contractors or subcontractors charging first time homebuyers or sellers loan processing or loan origination fees for HOME loans are to discontinue this practice immediately.
- Regarding the nominal application fees to discourage frivolous applications, we have not seen this widely used around the state and do not encourage them. If they are charged, HCD policy is that they should only be used to cover third party expenses, such as credit reports, and should never exceed twenty-five dollars (\$25).
- In order for us to monitor compliance with this requirement, beginning immediately, for each project funded with HOME funds, HOME contractors are to provide our office with a complete, certified copy of the HUD 1, settlement or escrow company closing statement, including the first page summary and supporting detail sheets. This should be provided at the earliest opportunity, either with the drawdown request or upon submission of the project completion report.
- Also, for each project, programs are to provide our office with the borrower's MACAW (Mortgage Credit Analysis Worksheet) completed by the mortgage lender or other underwriter. This should be provided at the earliest opportunity, either with the drawdown request or upon submission of the project completion report.
- State Recipients' written agreements with their administrative subcontractors must disclose all compensation the subcontractor will receive because of their participation in the HOME program, including any pass through of the 5% administrative allowance, fees collected from buyers or sellers, or payments received from third parties in relation to HOME activities, such as from lenders or realtors. Further, the contract should address the prevention of any conflict of interest as defined at 24 CFR Part 92, Section 92.356. Administrative subcontractors can only receive compensation for HOME activities from the employing city or county and not receive any income from interested third parties. If an administrative subcontractor administers your program, please review your contract with them for these disclosures and that it addresses preventing conflicts of interest. If you employ an administrative subcontractor, within 30 days of the date of this memorandum, please provide your HOME representative with a certification that your subcontract complies with these requirements or that, within 90 days of your certification, the subcontract will be renegotiated to include the appropriate language.
- Any references in program guidelines to loan processing or loan origination fees being charged to HOME buyers or sellers are to be removed. Further, if any loan application fees are being charged, they should be described in the guidelines. Please review your program guidelines in relation to these issues. If the above applies to your program guidelines, within 30 days of the date of this memorandum, please provide your HOME representative with a draft amendment to your guidelines eliminating any reference to such loan processing fees and/or describing any existing loan application fees.

Please be aware that failure to comply with these instructions may subject your program to appropriate administrative sanctions. If there are any questions, please contact your HOME representative.

HOME Representatives and Geographic Areas by County

(Revised 02/2004)

Elizabeth White (916) 327-3613

Los Angeles
Modoc
Riverside
Sacramento
San Diego
Santa Cruz
Siskiyou
Tulare
Ventura

Mike Macrina (916) 323-4695

Del Norte
Fresno
Humboldt
Kern
Kings
Monterey
San Luis Obispo
Santa Barbara
Santa Clara

Desiree Jordan (916) 327-3611

El Dorado
Nevada
Orange
San Bernardino
Solano

Sherry Mediati (916) 324-3133

Alpine
Amador
Calaveras
Inyo
Lassen
Madera
Mariposa
Merced
Mono
Placer
Plumas
San Benito
Sierra
Stanislaus
Tuolumne

Marc Firestone (916) 327-3592

Butte
Colusa
Glenn
Lake
Marin
Mendocino
Napa
Shasta
Sonoma
Sutter
Tehama
Trinity
Yolo
Yuba

CHDO Representatives

Carlene DeMarco	(916) 324-3757
Chandra Clady	(916) 327-7243
Deanna Dennler	(916) 327-3617
Linda Jones	(916) 327-0579
Yusef Medina	(916) 327-3602
Albert Rollin	(916) 327-3614
Karen Ruppert	(916) 327-2877
Ramunda Smith	(916) 924-3759

Note: Imperial County is not currently assigned. Please call (916) 322-0356.

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**HOME****MANAGEMENT MEMORANDUM**

HOME Investment Partnerships Program

Memorandum Number: 02-03

To: All Interested Parties

From: Wayne Walker, Section Chief
HOME Investment Partnership Program

Re: New Race/Ethnicity Categories

The Department of Housing and Community Development has received the enclosed letter from the U.S. Department of Housing and Urban Development (HUD) regarding new race/ethnicity categories. The letter requires race collection by ten new categories and a separate collection for Hispanic Ethnicity data for all activities reported on, beginning with our 2002 CAPER.

Effective immediately State Recipients and CHDOs shall collect race/ethnicity data using the new categories. New HOME Project Set-Up Report and Project Completion Report forms are enclosed for immediate implementation. These forms can also be found on our website at <http://www.hcd.ca.gov/ca/home/fiscalindex.html>. HOME's Annual Performance Report and other affected forms will be revised and provided at a later date.

If you have any questions, please contact your HOME representative.

Attachments



U.S. Department of Housing and Urban Development
Los Angeles Field Office
611 West Sixth Street
Los Angeles, California 90017-3127

HUD

Office of Community Planning and Development

Information Bulletin

Issue No. CPD-2002-019

Date: August 24, 2002

MEMORANDUM FOR: All CDBG, HOME, ESG, and HOPWA Coordinators Located within the Los Angeles Field Office of Community Planning and Development Jurisdiction


FROM: Robert G. Illumin, Deputy Director, Office of Community Planning and Development, 9DDS

SUBJECT: New Race/Ethnicity Categories
Revised Bulletin

On July 23, 2002, we issued an Information Bulletin notifying you that the Office of Management and Budget (OMB) has required the collection of data on race/ethnicity by ten new categories. This revised bulletin is intended to clarify that Hispanic/Latino ethnicity data must continue to be collected and reported by grantees and subrecipients.

There are ten new racial/ethnicity categories. The first five will be for a single race, four will be for multiple race combinations, and the tenth will be a balance category. For your information, the new categories are again listed in this Notice below.

OMB requires implementation of the collection of data based on the new race/ethnicity categories by December 31, 2002. The Integrated Disbursement and Information System (IDIS) is in the process of being changed to include the new race categories. The change in IDIS is expected to take place in November 2002. In addition, HUD is developing a Department-wide policy statement and guidance regarding reporting using the new categories. The guidance will be made available to you as soon as it is released.

The new race categories should be included in all contracts with subrecipients (i.e., nonprofits, etc.) carrying out program year (PY) 2002 activities so that they can begin collecting the information correctly for your PY 2002 CAPER. This will be required for all program activities reported in your PY 2002 CAPER.

As noted above, you should continue to collect and report data for Hispanics/Latinos. However, Hispanics/Latino should not be included as one of the racial categories but rather as a separate ethnicity category. There are no other ethnicity categories besides Hispanic/Latino. This policy change conforms to the definitions and data-collection standards established by the U.S. Census Bureau and apply to all Federal Agencies and their programs.

The new race categories are as follows:

Single Race Category

1. American Indian or Alaska Native
2. Asian
3. Black or African American
4. Native Hawaiian or Other Pacific Islander
5. White

Multiple Race Combinations

1. American Indian or Alaska Native and White
2. Asian and White
3. Black or African American and White
4. American Indian or Alaska Native and Black or African American

Tenth Race Category

1. Balance/Other (The balance category will be used to report individuals that are not included in any of the single race categories or in any of the multiple race categories listed above.)

In addition to the above categories, "Hispanic" will be an ethnicity Category that cuts across all races. Those who are White, Black, Asian, Pacific Islander, American Indian, or a multi-race may also be counted as being Hispanic. Grantees should be aware as they begin their next program year that they will be asked to begin categorizing beneficiaries not only by the new race categories, but simultaneously also by Hispanic ethnicity.

Attached, is a sample data collection form that you can use to gather race and ethnicity data for your 2002 CAPER. If you have any questions regarding the above, please contact your assigned CPD Representative.

Attachment.

Sample Race/Ethnicity Categories for Federally-funded Program Applications

Race/Ethnicity

This information is confidential and is only used for government reporting purposes to monitor compliance with equal opportunity laws. Please note that self-identification of race/ethnicity is voluntary.

RACE

☐ White

☐ American Indian or Alaska Native AND White

☐ Black/African American

☐ Asian AND White

☐ Asian

☐ Black/African American AND White

☐ American Indian or Alaska Native

☐ American Indian/Alaska Native AND Black/African American

☐ Native Hawaiian or Other Pacific Islander

☐ Other: _____

HISPANIC/LATINO ETHNICITY ☐ Yes ☐ No

☐ Yes, Mexican/Chicano

☐ Yes, Cuban

☐ Yes, Puerto Rican

☐ Yes, Other Hispanic/Latino: _____